

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

DWAYNE HARRIS,

Plaintiff,

v.

OLIVIA KARL, *et al.*,

Defendants.

Case No. 2:05-CV-1133

JUDGE GEORGE C. SMITH

Magistrate Judge Norah McCann King

OPINION AND ORDER

This is a civil rights action brought under 42 U.S.C. § 1983 by Dwayne Harris (“plaintiff”), an inmate at the Richland Correctional Institution in Mansfield, Ohio. This matter is before the Court on *Plaintiff’s Motion to Strike Defendants’ Motion to Dismiss; and their Response to Plaintiff’s Motion to File Supplemental Pleadings* (“*Plaintiff’s Motion to Strike*”). Doc. No. 33. For the reasons that follow, *Plaintiff’s Motion to Strike* is **DENIED**.

In *Plaintiff’s Motion to Strike*, plaintiff argues that *Defendants’ Motion to Dismiss* must be stricken because “both sides entered matters outside the pleadings,” *i.e.*, *Plaintiff’s Motion for Summary Judgment* and defendants’ opposition to that motion. *Plaintiff’s Motion to Strike* at 1-2. Plaintiff, however, is simply mistaken.

As a general rule “[m]atters outside of the pleadings are not to be considered by a court in ruling on a 12(b)(6) motion to dismiss.” *Weiner v. Klais and Co., Inc.*, 108 F.3d 86, 89 (6th Cir. 1997) (emphasis added). This Court did not refer to matters outside the pleadings¹ when it considered *Defendants’ Motion to Dismiss*. See Doc. No. 32.

¹Exhibits attached to the *Complaint* were considered, however.

In *Plaintiff's Motion to Strike*, plaintiff also asks this Court to strike defendants' response to two earlier motions to file supplemental pleadings because these earlier motions, Doc. Nos. 14, 16, have since been withdrawn. *Plaintiff's Motion to Strike* at 2. Plaintiff's request is not well-taken.

Although plaintiff voluntarily withdrew his earlier motions, plaintiff requested the same relief in his later motion for leave to file an amended complaint, Doc. No. 26, *i.e.*, leave to add a *habeas corpus* claim to this action. It was therefore entirely appropriate for defendants, in opposing plaintiff's later motion, to incorporate their response to plaintiff's earlier motions.

WHEREUPON, in light of the foregoing, *Plaintiff's Motion to Strike*, Doc. No. 33, is **DENIED**.

August 18, 2006
Date

s/Norah McCann King
Norah M'Cann King
United States Magistrate Judge